IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.46663-M of 2001

DATE OF DECISION: AUGUST 23, 2006

Gurbaksh Singh and others

.....PETITIONERS

VERSUS

State of Punjab and others

.....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr.H.S.Brar, Advocate,
for the petitioners.
Mr.N.S.Gill, AAG, Punjab,
for respondent No.1.
Mr.B.S.Sidhu, Advocate,
for respondents No.2 to 7.

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JUDGMENT

This petition has been filed under Section 482 Cr.P.C. by the petitioners for setting aside the order dated 17.10.2001 passed by the Additional Sessions Judge, Muktsar, whereby he has set aside the order dated 25.9.2000 passed by the Sub Divisional Magistrate, Muktsar for initiating the proceedings under Sections 145/146 Cr.P.C.

2. The brief facts of the case are that one Bohar Singh was owner of the land in dispute. In a tragic incident, he along with his wife Manjit Kaur and his minor son Lakhbir Singh died on 31.12.1999 when their jeep fell into Rajasthan canal. The deceased Bohar Singh did not leave any legal heir from his paternal side. His parents had died in his childhood. He was not survived by any grandfather, grandmother, father's brother or brother or sister of his own. The legal heirs of Bohar Singh from maternal side, who

are respondents No.2 to 8 in this petition, had taken possession of the land and started cultivating the same. They claimed that Lakhbir Singh son of Bohar Singh being youngest, was presumed to have died subsequent to the death of his parents, therefore, the estate left by his parents was inherited by him and since there was no other legal heir from the paternal side, legal heirs from the maternal side were entitled to succeed the land in dispute. Respondents No.2 to 8 came into possession of the land in dispute and khasra girdawari was ordered to be corrected in their names by the Asstt.Collector IInd Grade, Muktsar vide order dated 5.4.2000. The petitioners, who claimed themselves to be the legal heirs of the deceased from the paternal side, filed an appeal against the aforesaid order of correction of khasra girdawari in the Court of Collector, Muktsar. The said appeal was dismissed vide order dated 26.7.2000 while holding that respondents No.2 to 8 were in possession of the disputed land.

3. During the pendency of those proceedings, the police of Police Station Bariwala filed a Calendra in the Court of S.D.M., Muktsar to initiate the proceedings under Section 145 Cr.P.C. with regard to the said land. Vide order dated 19.4.2000, S.D.M.,Muktsar dismissed the said Calendra while holding that respondents No.2 to 8 were in physical and exclusive possession of the land in dispute and, therefore, the same cannot be attached under Section 145 Cr.P.C. However, it was directed that in case any party tries to breach peace, security proceedings under Sections 107/151 Cr.P.C. be initiated against them.

4. After five months of passing of the above-said order, S.D.M., Muktsar on his own, without there being any Calendra from the police, passed an order dated 25.9.2000 initiating proceedings under Sections

145/146 Cr.P.C. attaching the land in dispute and appointed Tehsildar of the area as a receiver to take possession of the said land. After four days of passing of the said order, S.D.M. while exercising the powers of the Asstt.Collector Ist Grade under the Punjab Land Revenue Act, sanctioned the mutation of the land in dispute in favour of the petitioners holding that Manjit Kaur wife of Bohar Singh had died after the death of her husband and son. It is pertinent to mention here that the said order of sanctioning the mutation by the S.D.M. was set aside in appeal by the Collector.

5. Against the order dated 25.9.2000 passed by the S.D.M., Muktsar under Sections 145/146 Cr.P.C., a revision was filed by respondents No.2 to 8 before the Additional Sessions Judge, Muktsar. The same was allowed on 17.10.2001. Against the said order, the instant petition has been filed by the petitioners, who claimed the land in dispute of Bohar Singh from paternal side.

6. I have heard the counsel for the parties. The factual position in this case , i.e., with regard to the death of Bohar Singh, his wife Manjit Kaur and their minor son Lakhbir Singh, and their relations with the parties have not been disputed. The petitioners claimed the land in dispute being the legal heirs of the deceased from paternal side. It has not been disputed before me that deceased Bohar Singh did not leave any legal heir from his paternal side. His parents had died in his childhood. He was not survived by any grandfather, grandmother, father's brother or brother or sister of his own. It has also not been disputed that in the revenue record, the possession of the land in dispute is recorded in favour of respondents No.2 to 8. Vide order dated 5.4.2000, the Asstt. Collector IInd Grade, Muktsar

ordered the correction of khasra girdawari in favour of respondents No.2 to 8. Against the said order, the petitioners filed an appeal. The same was dismissed by the Collector. It is pertinent to mention here that the order of the Collector though was set aside by the Commissioner and the matter was remanded, but the Financial Commissioner Appeals-I, Punjab, Chandigarh vide his order dated 9.9.2002 set aside the order of the Commissioner and confirmed the order dated 5.4.2000 passed by the Asstt.Collector IInd Grade, Muktsar as well as order dated 26.7.2000 passed by the Collector. Counsel for respondents No.2 to 7 states that the said order has become final. The said position has also not been controverted. It has also not been controverted that on 15.4.2000, the police submitted a Calendra in the Court of S.D.M., Muktsar for initiating the proceedings under Section 145 Cr.P.C. The said Calendra was dismissed by the S.D.M., Muktsar vide order dated 19.4.2000 while holding that the respondents were in physical and exclusive possession of the land in dispute. It was further ordered that in case the petitioners interfere into the peaceful possession and tried to disturb the peace, security proceedings under Section 107/151 Cr.P.C. be initiated against them. The said order had become final. The same was not challenged by the petitioners. It is not disputed that on 25.9.2000, S.D.M., Muktsar initiated the instant proceedings under Section 145 Cr.P.C. by the impugned order and appointed the receiver at his own. It is also not disputed that S.D.M. while passing the said order did not issue any notice to either of the parties to put up their claim regarding possession. No Calendra was filed by the police stating that there was any apprehension of breach of peace. It is also not disputed before me that after four days of the passing of the said order, the S.D.M. sanctioned mutation of the land in dispute in

favour of the petitioners. The Additional Sessions Judge while taking into consideration all these facts, came to the conclusion that there was no justification and reason for initiating the proceedings under Section 145 Cr.P.C. and for appointing the receiver on the land in dispute as there was no material before him which could indicate the existence of a dispute likely to cause breach of peace between the parties nor he had provided an opportunity to the parties to put up their claim in respect of their actual possession over the land in dispute. He had passed the order which appears to be a final order and appointed the receiver. He had not asked any party to put up their claim regarding the actual possession. The Additional Sessions Judge came to the conclusion that the order passed by the S.D.M. is totally illegal and without jurisdiction. After four days of the passing of the order, he sanctioned the mutation in favour of the petitioners. Keeping in view all these facts, the revisional Court came to the conclusion that the S.D.M. exercised his powers in a haste without application of his mind. It is pertinent to mention here that when the S.D.M. initiated the proceedings and passed the impugned order, the civil suits filed by both the parties were pending in which they were claiming the land in dispute.

7. The sole contention raised by the counsel for the petitioners is that the order dated 17.10.2001 is without jurisdiction as the order dated 25.9.2000 passed by the S.D.M., Muktsar was an interlocutory order and no revision was maintainable against the same. In support of his contention, learned counsel has placed reliance upon a Division Bench decision of this Court in Kartar Singh and others vs. Smt.Pritam Kaur, 1984(1) RCR (Crl.) 617. A similar contention was raised by the petitioners before the revisional Court also. The said contention was rejected by the revisional Court while

observing as under:-

> "After having considered the submissions made on behalf of both the parties, I do not find any merit in the objection taken against maintainability of the revision petition. The observations made in the rulings cited at bar by the learned counsel for the contesting respondents is not disputed, but these, to my mind, have no bearing to the facts and circumstances of the present case. The facts of this case are clearly distinguishable from the facts of those cases. In Manohar Lal vs. Sheo Lal 1998 (4) R.C.R. (Crl.)848 (full citation quoted), the learned S.D.M., while passing the order appointing Naib Tehsildar as a receiver, directed the case to be put up before him on the next date for evidence. In Kartar Singh and Ors. vs. Smt. Pritam Kaur 1984 (1) R.C.R. 617 (full citation quoted) also receiver was appointed till further orders, meaning thereby that the proceedings before S.D.M. were not concluded. Similar observations were made in Soma @ Sahib Kaur vs. Gurnam Singh and another, 1984(2) R.C.R. 251 (full citation quoted) in view of the decision made in Kartar Singh's case (supra). In the present case, the position is clearly different. Here admittedly the Ilaqa Police had filed a 'Calendera' on 15.4.2K in the court of learned S.D.M. for initiating proceedings under section 145 Cr.P.C. but the learned S.D.M. dismissed that Calendera vide order dated 19.4.2K holding the revision petitioners to be in peaceful and exclusive possession of the disputed property vide his order dated

19.4.2000. Despite this he proceeded to pass the impugned order of his own initiating proceedings under sections 145/146 Cr.P.C. and appointing Tehsildar of the area as receiver on the ground that breach of peace is likely to take place at any time if the revision petitioners continued to cultivate the land in dispute. Even from this order, it is evident that the learned S.D.M. admitted the possession of the revision petitioners over the disputed land when he passed the same.

9. The perusal of the order, under revision, shows that the learned Magistrate has not recorded any direction to either party to file their objections with respect to the actual possession of the land in dispute, which was necessary under the law. Instead he appears to have passed a final order attaching land and appointing receiver, such an order, by no stretch of imagination, can be said to be an interlocutory order and is open to challenge in revision. In Virender Singh vs. State of Haryana and Ors. 1998 (1) Crl. Court Judgments 614 (full citation quoted) Hon'ble High Court had held that the order of S.D.M. initiating proceedings under Section 145 Cr.P.C. cannot be said to be an interlocutory order. It was observed in the said case that the learned S.D.M. before taking action under Section 145 (1) Cr.P.C. has to be satisfied from a report of police officer or other information that a dispute likely to cause breach of peace exists concerning any land etc. and this would touch the jurisdiction of the learned S.D.M. Once the jurisdiction of the learned S.D.M. has to be examined and

considered as to whether in the given facts and circumstances he could assume jurisdiction to initiate proceedings under Section 145 (1) Cr.P.C. Such an order would be amenable to the revisional jurisdiction. In the said case, Hon'ble High Court had remanded the case back to the court of learned Addl. Sessions Judge, Ambala with the direction to decide the same on merits, after he had dismissed the revision petition filed against an order under section 145 (1) Cr.P.C. as not maintainable.

10. Similar view has been taken by Hon'ble High Court of Punjab & Haryana in case Surender Singh Vs. State of Punjab 1996 (2) R.C.R. 155 (full citation quoted)."

8. I do not find any illegality or infirmity in the order passed by the revisional Court. If the order dated 25.9.2000 passed by the S.D.M. is perused, it appears to be a final order. While passing the said order, the S.D.M. has not discussed at all the previous order dated 19.4.2000 passed by the S.D.M., whereby the Calendra submitted by the police for initiating the proceedings under Section 145 Cr.P.C. was dismissed and it was held that respondents No.2 to 8 were in physical and exclusive possession of the land in dispute and, therefore, the same cannot be attached under Section 145 Cr.P.C. However, it was directed that in case any party tries to breach peace, security proceedings under Sections 107/151 Cr.P.C. be initiated against them.

9. While passing the impugned order dated 25.9.2000, the Sub Divisional Magistrate had totally ignored the aforesaid facts. He initiated the proceedings under Section 145 Cr.P.C. without there being any Calendra

submitted by the police and also without there being any material that there was any apprehension of breach of peace. In my opinion, in the facts and circumstances of this case, the Sub Divisional Magistrate passed the aforesaid order in a haste without there being any sufficient material for initiating the proceedings under Section 145 Cr.P.C. pertaining to the land in dispute. He has completely ignored the facts that civil disputes are pending between the parties and khasra girdawari had already been ordered to be corrected in favour of respondents No.2 to 8. In my opinion, the revisional Court has rightly set aside the illegal order dated 25.9.2000 passed by the S.D.M., Muktsar. Keeping in view these facts and the fact that the mutation of the land in dispute has already been sanctioned in favour of respondents No.2 to 8 and the said order has not been upset till date, and further as per the previous order dated 19.4.2000 passed by the S.D.M., Muktsar and the khasra girdawari of the land in dispute, respondents No.2 to 8 are in possession of the land in dispute, I do not find any ground to interfere in exercise of the discretionary jurisdiction of this Court under Section 482 Cr.P.C. in the order dated 17.10.2001 passed by the revisional Court.

10. Dismissed.

August 23, 2006 **(SATISH KUMAR MITTAL)**
vkg **JUDGE**